

Governmental Advisory Committee
to the U.S. Representative to the
Commission for Environmental Cooperation

June 13, 2001

The Honorable Christine Todd Whitman
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, DC 20004

Dear Governor Whitman:

It is my pleasure to submit to you the advice and recommendations from the meeting of the Governmental Advisory Committee (GAC) to the U.S. Representative to the Commission for Environmental Cooperation (CEC) that was held in Washington, DC on May 3-4, 2001. On behalf of the entire Committee, we welcome the opportunity to provide our advice and counsel to you and the new Bush administration as you consider future directions and priorities for the CEC.

The GAC discussed a wide range of topics at our recent meeting while focussing our recommendations on the items which appeared to be the highest priorities to be addressed during the June 28-29 Council of Ministers Session in Guadalajara, Mexico. We appreciate the opportunity to participate in this year's Council Session as observers, and we hope to have the opportunity to meet with you at some time during the course of this year's Session.

We would like to again convey our thanks to the representatives from the Office of the U.S. Trade Representative, the U.S. Department of State, the U.S. Department of Justice, and the U.S. Department of the Interior that participated in our May meeting, sharing their respective views on CEC issues and programs. We would also like to thank Greg Block from the CEC Secretariat for joining us to provide context and perspective during our discussions. Finally, we want to acknowledge the continued support and able assistance from EPA, particularly that provided by the Office of International Activities and the Office of Cooperative Environmental Management, which makes our advisory work fruitful and effective.

In closing, we note that there are currently four vacancies on the GAC and we urge you to fill them as quickly as possible so that we can have the broadest possible representation as we

develop our advice. We look forward to your response to our recommendations, and we are ready to assist you in any way possible as you prepare for the CEC Council of Ministers Session in Guadalajara.

Sincerely,

Denise Ferguson-Southard
Chair
Governmental Advisory Committee

Attachments

cc: John Knox
Alan Hecht
James Morant
Elizabeth Hance
Liette Vasseur

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GAC Advice No. 2001-1

Articles 14 and 15

As we have stated in past letters of advice, the GAC believes that the citizen submission process of Articles 14 and 15 is a cornerstone of the North American Agreement on Environmental Cooperation (NAAEC). Any actions that would impede the efficacy of this process would also undermine public support for any expansion of NAFTA or the adoption of a Free Trade Agreement of the Americas (FTAA).

The GAC fully endorses the findings and recommendations in the Joint Public Advisory Committee (JPAC) Draft Report on “Lessons Learned: Citizen Submissions under Articles 14 and 15 of the North American Agreement on Environmental Cooperation.” The GAC strongly concurs with the JPAC in its assessment of the Articles 14 and 15 citizen submission process as “unique—and indispensable . . . in fostering the vigorous environmental enforcement that is a necessary component of expanded free trade under NAFTA.” We understand that the U.S. Government is preparing formal comments to JPAC on the draft “Lessons Learned” report, and we look forward to seeing them as soon as they are available.

As to submissions which are currently pending before the Secretariat, we strongly recommend that the U.S. support the development of a factual record in the *Migratory Birds* submission (SEM-99-002). Voting against the development of a factual record for this submission—the first involving the U.S. in which the Secretariat has determined that development of a factual record is warranted—would raise legitimate questions regarding the U.S.’s continued commitment to the citizen submission process.

The GAC also urges the U.S. to strongly support prompt Secretariat and Council action on the other pending submissions and appropriate follow-up once any factual records are developed. We echo the NAC—and our own past advice—in encouraging CEC monitoring and assessment after the development of each factual record to ensure that long-term improvements in the environment actually occur.

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GAC Advice No. 2001-2

CEC Biodiversity Strategy

The GAC looks forward to reviewing future drafts of the CEC Strategic Plan for the Conservation of Biodiversity. We believe it is important to integrate the work of other CEC programs, such as the North American Bird Conservation Initiative (NABCI), into the Biodiversity Strategic Plan so that the benefits of these programs are leveraged and fully realized.

The CEC should develop mechanisms to routinely incorporate the biodiversity-related work of all of its programs into the Strategic Plan. Examples of CEC programs that aren't organizationally included in the CEC Conservation of Biodiversity program area, but that nevertheless have important biodiversity impacts, are the Pollutant Release and Transfer Register and the Sound Management of Chemicals.

In addition to the Biodiversity Conservation Working Group, the CEC should use existing trilateral and bilateral organizations to help develop and implement the Strategic Plan. Using such organizations would enhance public participation and transparency, while helping to ensure that the broadest range of species are included. By way of example, there are a number of organizations that are actively engaged in biodiversity issues affecting the Bight of the Californias and the Gulf of Mexico that could be of great assistance to the CEC as it refines and advances the Plan. Engaging such organizations creates opportunities to provide greater impact from the CEC's work, more efficient use of limited resources, and transfers experience and expertise which will only benefit and enhance the program.

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GAC Advice No. 2001-3

Trade and Environment

We join the NAC and others in emphasizing the importance of Article 10(6) of the NAAEC and the cooperation between the CEC Council and the NAFTA Free Trade Commission that it engenders. We strongly encourage the U.S. Government to make the greatest possible use of the Article 10(6) working group to advance the trade and environment dialogue, particularly regarding the Chapter 11 investor-state dispute provisions of NAFTA.

We advocate using the Article 10(6) working group to review pending Chapter 11 cases and develop recommendations on “lessons learned” that could guide the NAFTA parties on these issues in the future. We also recommend using the 10(6) working group to help identify criteria for intervention in trade cases where North American environmental policy may be effected.

Finally, want to strongly state our belief that the Article 10(6) working group and the Ottawa Process are complementary and not mutually exclusive. These two forums should operate in unison with coordinated, transparent and inclusive agendas.

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GAC Advice No. 2001-4

Pollutant Release and Transfer Registers

The GAC has several recommendations regarding the development and refinement of Pollutant Release and Transfer Registers (PRTRs) that would enhance the utility of data across all three NAFTA countries.

First, all three countries should adopt comparable reporting standards in terms of use of a chemical versus emissions of a chemical. Such an approach is essential to a full understanding of pollutant emissions and the transfer of chemicals across the North American continent.

Second, to the extent that facility specific data is not currently available from any Party that is in the developmental stage of this program, we recommend a phased approach to integrating PRTRs into that Party's activities. Such an approach would involve aggregate level data being captured on progressively smaller scales, moving from national, to state, to local, to eventually facility specific data. Obviously this approach should progress through the various phases as quickly as possible in order to provide for comparable reporting standards across the North American continent as expeditiously as possible.

Third, we recommend integrating PRTRs with criteria air pollutant monitoring systems to create more complete pollutant inventories and to obtain economies of scale.

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GAC Advice No. 2001-5

Environmental Management Systems

The GAC recognizes the good work that the CEC has done to promote more effective Environmental Management Systems (EMSs) and encourages more effort in this area. We recommend seeking partnership opportunities with States, industry associations, and other organizations that have been developing and promoting EMSs to develop pilot projects that would be applicable across all of North America.

We particularly encourage the development of pilot projects with small and medium size enterprises that could use EMSs to both reduce pollution and increase profitability by more effectively controlling costs. EPA has broad experience promoting pollution prevention projects in different industrial sectors, and we recommend evaluating some of these efforts to determine their transferability to the rest of the North American continent.

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GAC Advice No. 2001-6

Peer Review of CEC Reports

The CEC has proven to be extraordinarily creative and adaptable in fulfilling its mandate and its overall work has been commendable. However, several reports which were produced by CEC contractors have been released before they have been fully vetted and peer reviewed. The absence of this type of review may impact upon the level of acceptance that such CEC reports may receive in the larger North American and international community.

We recommend developing a standard protocol for peer reviewing CEC reports before they are released to verify the accuracy and integrity of their findings. We note that there are several major CEC reports under development that could benefit from these new peer review procedures. Hopefully, a protocol could be developed in ample time to be used prior to the time that any pending reports are released to the public.

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GAC Advice No. 2001-7

Other Issues

State of the Environment Report

The GAC encourages the United States to move the CEC toward a reevaluation of the approach taken on the State of the Environment Report, which is required under the NAAEC. Although there has been some progress in this area, there is a significant opportunity that is available to the Parties to substantially improve the process. We strongly urge the CEC to review and revamp the approach taken in the past, with a view towards other models which have been used internationally to develop comparable evaluations. One possible tact would be to use the OECD indicators which have been developed and apply or translate them for use in North America. This approach may reinvigorate the process while providing some benefit from an existing, successful paradigm.

Full funding for the North American Development Bank (NADBank) and the Border Environmental Cooperation Commission (BECC)

The GAC would like to emphasize the importance of addressing the trade-related, environmental impacts of NAFTA to those communities throughout North America who are most affected by these consequences, whether it is in those communities where people reside, work or pursue recreational activities. One of the most important opportunities that is available to address these impacts are those available through enhancing local infrastructure in these affected communities. The mechanism through which this end is achieved is through financing from NAFTA-created financial institutions, such as the NADBank and the BECC. The GAC advocates the United States' continued and vigorous support of the full funding of these institutions, given the pivotal role that they play in assuring that the environmentally-detrimental impacts are addressed at the local level.

Trade and Transportation

The CEC project on Trade and Transportation Corridors has illuminated some of the growing environmental problems associated with the increased flow of goods across the three NAFTA countries. The U.S. is currently developing regulations to deal with the impacts of Mexican trucks traversing North America, and the GAC strongly feels that EPA must be fully and completely involved in these rulemakings. We understand that EPA may not have had the

opportunity to provide its full input into the process responsible for addressing this important issue, which will impact tremendously upon many American communities. EPA's involvement is essential in order to assure that any regulatory regime that is implemented for Mexican trucks will fully address all of the environmental consequences and provide uniformity with existing standards applied to American trucks.

Transboundary Environmental Impact Assessments

The GAC strongly recommends that the Parties complete an agreement on Transboundary Environmental Impact Assessment (TEIA) mechanisms as soon as possible. While we are encouraged by what seems to be some movement of the Parties on this issue, we note the inordinate length of time that the discussions have taken thus far. In past letters of advice we have commented on the need for the Parties to formally adopt a TEIA mechanism, and we have suggested that some of the TEIA agreements that currently exist between U.S. States and Canadian Provinces could serve as models. We look forward to energetic discussions among the Parties that rapidly lead to the adoption of a comprehensive and effective TEIA mechanism.

Persistent Organic Pollutants (POPs)

The GAC would like to acknowledge and applaud the strong leadership role that the CEC has played on the North American continent in garnering broad acceptance of the Persistent Organic Pollutants Convention Treaty, which was signed in Stockholm, Sweden in May of this year. This work has, in fact, been acknowledge as a regional model which can be used internationally and we simply wanted to lend our voice to the chorus of supporters who can see the tangible benefit of the good work that has resulted from the CEC activities. It is very clear that such broad support for the Treaty was, in part, due to such preparatory efforts and we hope for such continued leadership in North America in a manner which will benefit others internationally.